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THE CIVIL JUSTICE COMMITTEE,S QUESTIONNAIRE

MEMORANDUM SUBMITTED BY THE EDITOR

Preliminary.—There can be little doubt that, in all grades of Courts, the delay under the existing system is so great that some effective remedy is urgently called for. But it ought not to be forgotten that the subject is so complex and its bearings so manifold that drastic remedies may do more harm than good. Superfluous as it may seem, it has unfortunately become necessary to emphasise the fact that Courts and Rules of Procedure are after all but machinery and their sole end and justification consist in the confidence that they succeed in inspiring in the community at large. If justice delayed is sometimes felt to be justice denied, there is also the danger that what is imagined to be speedy justice may turn out to be little better than perfunctory disposal. I am anxious that nothing that I may say should be understood as casting any reflection on officers who, under trying conditions, are honestly striving to do their duty. But I feel that the importance of speed and dispatch may easily be exaggerated and measures based upon such a theory will greatly increase the temptation to *get through* work by any means. Few people can shut their eyes to the regrettable results that the existing rules as to periodical submission of returns by subordinate Courts, sometimes produce.

Statutory formalities and special Rules of Evidence.—Likewise, the multiplication of artificial rules of evidence is not calculated to advance the ends of Justice. The policy of the Registration Law has no doubt much to recommend it, but it will be a mis-application of the same policy, if the rules

should be made so to operate as not only to protect the innocent but also to help the wrong-doer. The well-known doctrine of the English Law that the Statute of Frauds ought not to be permitted to be used as an instrument of fraud is well worth following. Whatever may be the ideal value of a strict insistence on the importance of recitals in documents, it will be a mistake to shut our eyes to the fact that in this country benami transactions are so common and that in the drawing up of documents, one party is often able to take undue advantage of the ignorance or helplessness of the other. The reported decisions under S. 92 of the Evidence Act must serve to convince anybody of the amount of failure of justice that technical rules of evidence must lead to. Under the Registration Law, I accept the utility of Ss. 48 and 50, but I am unable to agree as to the desirability of allowing the executant himself to escape from his obligation, on the ground of non-registration of the document, when it was as much his business to see it duly registered and completed. The doctrine of part performance is in this connection an important principle of justice and it will indeed be regrettable if its beneficent operation should be excluded. I would indeed go the length of suggesting that the Law should be so amended as to provide that *as between the parties to a transaction or their privies*, non-compliance with statutory formalities should be no defence or ground of invalidation. I would however encourage registration for *all* documents by providing that wherever a document is not registered, any party suing thereon shall not be entitled even if successful, to the costs incurred in the proof of the document. It also appears to me desirable to lay down a discretionary presumption in favour of the genuineness of registered documents, when they come from proper custody, leaving it however to the Court in particular cases (as under S. 90) to insist on regular proof, including the examination of attestors. (Cf. S. 58). It appears to me going too far to throw on the other side the onus of *disproving* due execution.

From what I have said above, it will follow that I am opposed to the suggestions involved in questions Nos. 76 to 81 and question No. 57.

Attestation :—As to insisting on attestation in certain cases, I must say that the present state of illiteracy of a large percentage of the population makes it necessary to insist on

some safeguards in the case of documents executed by illiterate or half-educated people. I however do not see much reason in favour of discriminating in this respect between one class of documents and another. I would therefore recommend that the Rule as to attestation may be applied to all cases in which the executants are uneducated.

Recruitment :—As regards recruitment to Judicial Offices, I am bound to give expression to the general feeling that there is considerable room for improvement, in some respects, within the existing rules and in other respects, by change of rules. As regards service conditions, I may say that while I am not unmindful of the importance of ensuring that persons holding the higher grades of offices should be men of experience, it must be remembered that, under Indian conditions, a few years of work in the subordinate Judicial Offices take away the best of life in any man and it unfortunately happens only too often that by the time a man is appointed to higher offices he is very nearly past work. I do not wish to take advantage of this occasion to raise the question of direct recruitment from the bar to the higher Judicial Offices, but I would point out that even in making promotions from the service, some process of selection may preferably be resorted to, provided of course the power of selection is properly exercised. If promotions become a mere matter of seniority and routine there is little chance for special merit nor sufficient incentive for work.

Distribution and Arrangement of Work, Inspection, etc.— Speaking of the conduct of work in Courts, it is impossible to lay too much stress on the personal element. I regret to be obliged to state that one does not always find as much good-will and co-operation between the Bench and the Bar as one would like to see. This is not the place for discussing the reasons for this state of things, but no one can gainsay the importance of this factor even as a means of securing speedy disposal of work. The concentration of work in the hands of a few practitioners undoubtedly hampers Judicial Officers, especially in places where several Courts of unlimited jurisdiction exist side by side. But the natural anxiety of clients to avail themselves of the best professional help has also to be respected. I believe the inconvenience arising from this cause

is slowly decreasing, as the circle of practitioners handling important cases is widening. It may certainly be further reduced by avoiding the concentration of many Civil Courts in any one place.

I am strongly of opinion that the practice of requiring subordinate Judicial Officers to submit periodical returns of disposal should be abolished. It does little good but certainly much harm. There can be no better check on a judicial officer than the watchfulness of the bar of the place and while I certainly do not wish to encourage in them a habit of carrying tales against the presiding judge, I think it will be very useful if the inspecting officer takes the bar *as a whole* into his confidence. He will then easily get a true idea of the progress of work in the Court and the books maintained in the Court, if read in the light of such knowledge, will suffice to give all necessary information.

A considerable portion of the time of subordinate judicial officers is wasted (1) in routine work and (2) in the attempt to do different classes of work. I would suggest that a portion of the routine work now done by the Judge in Court may be conveniently entrusted to the Chief Ministerial Officer and that post filled by competent men. Under the present practice in the Madras High Court, such delegation to the Registrar is working fairly well and I do not see why items like re-posting of first hearing suits, adjournments on the score of non-service, issue of execution notices, legal representative notices and even orders on uncontested execution petitions should not be attended to by the chief ministerial officer, with a general reservation that any matter of doubt or difficulty may be placed before the Judge.

As to small cause work, I think there is much to be said in favour of separating it from other classes of suits and entrusting it to a separate tribunal. The Special Small Cause Courts recently tried in this Presidency seem to have proved unpopular, mainly because of their location in distant centres. In the present state of rural life, a policy of conferring *exclusive* jurisdiction on village courts or panchayats seems to be of doubtful expediency. A return to the system of investing Sub-Registrars with something in the nature of small cause jurisdiction may be tried with a maximum limit of hundred or two hundred rupees to begin with.

The suggested re-distribution of work amongst existing Courts, *e. g.*, Transfer of Succession Certificate Proceedings, Probate or Land Acquisition Proceedings from the District Court to the Subordinate Courts, has not much to recommend it. These are particularly matters that should be expeditiously dealt with and there is even less chance of this, if they should be transferred to a subordinate Court. There is a prevalent impression that subordinate Courts are more over-worked than District Courts, while District Judges complain that between Judicial work and Administrative work, they can hardly find time to do justice to either. The importance of proper supervision over subordinate Courts can hardly be over-rated and I would suggest that this should be done in a larger degree by the High Court than is now the case. So far at any rate as Subordinate Judges' Courts are concerned, I would almost completely transfer their supervision to the High Court. This will be valuable for several reasons and will incidentally serve to reduce in some measure the burden of administrative work on the District Judge.

Course of Trial, Adjournment, etc. :—The poverty, illiteracy and unbusinesslike habits of the people constitute the most serious handicap to the Court and to the practitioner alike. No amount of changes in procedure can suddenly remove this obstacle ; on the other hand a system of rigorous rules that do not make sufficient allowance for these defects is bound to lead to failure of justice. It is almost the rule in the moffussil, that people think of collecting the necessary evidence only when the case is about to be taken up for trial. This is why practitioners are obliged, in the conduct of cases, to go on in a kind of hand to mouth way, from day to day, as the trial proceeds ; and if any witness expected on a particular day disappoints them, they are in a fix. I very much doubt whether strict rules about adjournments or payment of day-costs will really improve matters. No judge who is alive to the realities of the situation can, with an easy conscience, refuse an adjournment in certain circumstances, even if he believes that the party is to some extent to blame. Nor can he always insist on the case being continuously proceeded with. It is such insistence or the apprehension of a refusal of an adjournment, that sometimes leads parties and pleaders to let in unnecessary evidence, merely to make a show of continuous progress. On the other hand, to provide for the contingency of possible un-

readiness or breakdown, judges generally err on the other side and post too many cases for each date. The result is, that even cases that are ready have often to be adjourned for want of time and parties and witnesses are put to needless expense and trouble. Again, I have known instances in which during the progress of heavy suits, the presiding judge has been unable to give more than half of each day for such suit. This is a great inconvenience to all concerned, but the judge could scarcely be blamed, when he felt himself obliged to devote the other half of each day to other work, lest his return for the month should show very poor disposal. It will greatly conduce to convenience and dispatch alike, if, as is sometimes done, the judge will generally have a conference with the bar, once in a week or so and ascertain what cases are really ready for the week and avoid unnecessary postings or re-postings. It should also be made a rule that once a witness is summoned for a hearing, an obligation lies on him to attend any adjourned hearing of which he may receive notice from the party or the pleader (by registered post if necessary). This will save considerable expense to the parties and also avoid the delay incidental to the process of fresh summoning. The system of binding over witnesses is not always observed in practice and it has the obvious disadvantage of compelling a large number of people to come and wait in Court indefinitely, without knowing exactly whether and when they may be required.

Processes :—Even under the existing procedure, there is reason to believe that the ministerial machinery is working unsatisfactorily and fraud and foul-play in the matter of service of *suit notices* are not uncommon. I am therefore unable to approve of any proposal calculated to give a considerable share of influence in this part of the work to the plaintiff himself. A direction to the process-server to report himself to the plaintiff's pleader is not likely to be of much advantage either, because it will only mean that the pleader will direct the plaintiff or his men to do the needful. I am equally opposed to the utilization of the village head-man or his staff for the purpose. There is so much of party spirit and partisanship in village life that it is unsafe to rely upon the headman in such an important matter. The rules may however be made more direct and specific as to the duty of village officers to assist Court peons in the matter of service. As regards witness summonses, the several alternatives suggested in the questionnaire may be

usefully tried. In connection with execution proceedings, there is much complaint against the honesty of the lower ministerial staff. It therefore seems desirable to provide that as a rule execution warrants should be entrusted only to the higher or more responsible section amongst them.

Framing of issues, Examination of parties etc.. :—The prevalent practice of submission of draft issues by both sides is to some extent responsible for the failure both of the practitioners and of the Court to perceive the true points in controversy at a sufficiently early stage so as to avoid calling unnecessary evidence. The practitioners draw up the issues more or less mechanically upon the pleadings and the Court rarely brings its mind to bear upon the matter. The parties generally do not appear on that day and there is hardly any discussion to enable the practitioners or the Court to discriminate between the immaterial or unsubstantial averments in the pleadings and the real points in controversy. The result of slackness at this stage is that evidence on all the issues is unnecessarily filed or called and applications for amendment etc., are put in at late stages. I would accordingly recommend that steps should be taken to bring home to trial judges that it is the duty of the Court to see that proper issues are framed and that unnecessary issues are not raised. Courts should be advised to insist as far as possible on the attendance of parties at the settlement of issues and to exercise more regularly the powers conferred on them by Orders 10 and 14 of the Code. I am however unable to agree to the proposal (Q. 33) that both parties should be fully examined before other witnesses are summoned. It will sometimes seriously prejudice a party to be compelled to disclose his evidence before the evidence on the other side is closed. And after all, the examination of the parties alone will not furnish any satisfactory basis on which the Court can decide whether the other evidence proposed to be called is really necessary or relevant. The examination of the parties will be useful only as a means of eliciting admissions and this is otherwise provided for by the Code.

Discovery, Inspection, Admission etc. :—The facilities provided by the Code for narrowing down the points in controversy are little availed of in the muffassil. It will help to save much time during the trial if Courts are able to insist on a due observance of these preliminary steps before a suit is taken up

for trial. The defect in the existing system of taxation of costs is in my opinion the main cause of the present unsatisfactory state of things in this respect. Though a certain amount of discretion is vested in the Court as to the award of costs, the prevalent system does not permit the Court to split up the expenditure incurred by the successful party and disallow such portions as might have been avoided by taking proper steps under the preliminary chapters. Changes in the rules of taxation will probably help to secure improvement in this direction. But I am unable to agree to the proposal that the Court should be given a discretionary power to limit or cut short oral evidence. Even under the present law, the Court has got the power to disallow irrelevant questions, but it is inadvisable to go further and set a time limit or numerical limit. It is common knowledge that Courts are influenced by the number of persons that depose to a particular fact and it often happens that while a trial Court is satisfied as to proof of a fact, the appellate Court happens to take a different view and the unfortunate party suffers because his vakil in the lower Court, relying on the trial judge's inclination, has not let in more evidence on the point.

Affidavit :—As to the use of affidavits, O. 19 of the Code is sufficiently comprehensive but its provisions are not fully availed of. I doubt if it will be possible or useful to extend its scope *in contested matters*. On any important point, the other side may insist on the cross-examination of the deponent and the object of saving time may not therefore be always attained. The very fact that certain proceedings are summary, is all the greater reason why they should be carefully done and not dealt with as mere formalities. There is no doubt the remedy by regular suit available in such cases, but it often makes a world of difference to a person, whether he is successful in the summary enquiry or is obliged to institute a suit. One has also to mention that in connection with affidavits, the solemnity of the oath is not sufficiently realised by the deponent, while in the case of *viva voce examination*, the sense of having to face the public court and the fear of cross-examination exercise some restraining influence.

Execution :—I am generally in favour of the suggestion in Q. Nos. 53, 54, 55, 56, 58, 60, and 61A., and the first part of 59. I do not however think it expedient to omit the second

proviso to O. 21, R. 16. As to Q. 62, I do not see how if the provision as to stay in R. 26 is to be retained, it will be useful to prohibit *interim* stay. If, as proposed under Q. 54, the powers of the court to which a decree has been transferred for execution are to be considerably enlarged, the reference in R. 26 to 'the Court by which the decree was passed' will probably be unnecessary.

Stay of Execution :—I would generally suggest that even after an appeal has been preferred, the power to stay execution of the decree appealed against should be vested only in the trial Court. If the matter is dealt with by the appellate Court, it has necessarily to act on very imperfect materials whereas the trial court is in a better position to know the real situation. Oftentimes appeals are preferred merely in the hope of obtaining a stay of execution and thus gaining time. I see nothing theoretically wrong in vesting the power of stay in the Trial Court (cf. O. 45, R. 13).

Appeal and Revision :—I regret to say that the right of appeal and of revision is sometimes abused and frivolous appeals are not uncommon. But I must add that the fault is not altogether that of the litigant. The uncertainty of the law, the conflict of decisions, and the several other factors which go to make the result of a litigation a matter of chance, combine to promote the litigious spirit. On the other hand I may mention that the late Sir Bhashyam Iyengar used to feel that in the present condition of our judiciary the rule of finality of findings of fact in second appeals is productive of hardship and that at least in cases in which the decision of the First Court has been reversed by the lower appellate Court, questions of fact also should be open for discussion in Second Appeals. Again, the power of revision is important, not merely as an actual corrective but as a factor present to the minds of subordinate Courts when dealing with non-appealable matters. I would however make the following suggestion :—

In money claims not exceeding Rs. 200 or Rs. 250, there should be no right of revision in the present form. A limited power of revision may however be conferred on District Courts in respect of Small Cause Suits that may be tried by a Sub-Registrar or such other officer. As regards Second Appeals, it may be hard to raise the appealable minimum to Rs. 1,000 in money suits or insist on a deposit of the decree amount as a

condition precedent. In suits relating to immoveable property, which constitute a very large proportion of our litigation, the test of pecuniary valuation is altogether misleading. I think it may be useful to insist that every Second Appeal should be accompanied by a certificate of the vakil or counsel concerned that in his opinion it raises a question properly open in a Second Appeal. I have no reason to doubt that such a responsibility if cast on the bar will be faithfully discharged. As regards Letters Patent Appeals, it was probably right to deny them in small cause revisions but there are other important matters coming up in revision under S. 115 C. P. Code and S. 107 of the Government of India Act and it is therefore not desirable to exclude the right of appeal under the Letters Patent in all Revision matters. Nor does it seem expedient to provide that all interlocutory orders should be attacked only on appeal from the final decree. This is likely to lead to unnecessary expense and waste of public time. I would therefore suggest that in Revision Proceedings (other than under the Small Cause Courts Act) a right of appeal under the Letters Patent should be allowed with the limitation that the Judge who heard the case should certify that it is a fit case for such appeal. Such a restriction is working satisfactorily enough in the Provincial Insolvency Act (not to speak of Privy Council Appeals) and may be usefully tried.

Summary Procedure :—I am inclined to think that the extension of summary procedure in the mofussil, in cases of liquidated claims for money may be tried in the case of select officers or in the case of claims up to a particular limit.

Mortgage Suits :—I am not in favour of the suggestion in Q. 15 of conferring upon Small Cause Courts, jurisdiction to deal with mortgage cases, even if they be simple. For one thing, it will require the creation of sufficient machinery for execution purposes ; and if it is proposed to get this done by the regular Courts, I see little purpose in the change. But even apart from this, the suggestion is open to other objections. The claim involved in the mortgage sued on may be simple, but, as a mortgage suit, it may involve the consideration of claims of other persons such as puisne mortgagees or prior mortgagees, and the Small Cause Court is hardly the proper tribunal to deal with such matters. This suggestion is also difficult to reconcile with the idea underlying Question No. 66.

I can appreciate the desire to make execution sales in mortgage suits as clear as possible ; but I am sorry to say that it does not seem possible of easy attainment. Of course the provisions of S. 73 and O. 34, Rr. 12 and 13 of the Civil Procedure Code aim at the same result and wherever there is scope for their application, Courts may reasonably try to act accordingly. But to say that a puisne mortgagee, for instance, suing for a few hundred rupees, should make a search of the register for encumbrances for, it may be, 50 years prior to his mortgage and make all the persons concerned in the property during such period parties to his suit and have all outstanding questions between them determined in that suit, seems to me far from expedient or practicable. Under S. 85 of the Transfer of Property Act (as it formerly stood) Courts took a very strict view as to the plaintiff's duty in mortgage suits, as regards the adding of parties, and yet it does not seem to have improved matters. Similarly the suggestion in cl. (*d*) of Question 66 is unworkable as regards absent parties. If the sale proceeds are paid over to some claimants and another claimant should afterwards turn up, there will be little use in referring him to the persons who have already drawn the money. They might have spent it or ceased to be solvent.

The last query in Question No. 66 really raises a larger issue, namely, as to the true category of what is described in the Transfer of Property Act, as a simple mortgage. The distinction between a simple mortgage and a charge has been by no means easy to draw, but if such a category of mortgages is to be kept on, it may be preferable to retain the present procedure. Otherwise, it will certainly be more convenient in all cases where only a sale is sought to pass only one decree and abolish the distinction between preliminary and final decrees. So far as the personal liability for any balance may have to be enforced, there is no particular reason why the matter should not be dealt with in execution itself.

Limitation :—I believe it is now fairly time to abolish the 60 years' rule of limitation. In the case of Government, a 30 years' rule as in the case of local bodies seems fairly sufficient. As regards suits for foreclosure or sale or redemption I would substitute a 12 years' period or perhaps 20. The provisions relating to acknowledgment, part-payment, etc., will serve to give all further extension that may reasonably be required. The case of Trust properties has long been the sub-

ject of trouble and difference of opinion. I would suggst that they be removed from Art. 134 and a special provision made similar to Art. 141, enacting that in all cases of improper alienation of trust property, limitation will begin to run only from the time of the successor of the alienating trustee. It should be made clear that this applies not only to trustees in the strict sense but also to heads of mutts, shebaits, etc.

Substantive Law :—I am not here recommending any changes in the substantive law as I think that such proposals should be considered on their own merits and not in their bearing on procedure. But I would suggest in the present connection the introduction of a procedure by way of originating summons to consider and decide upon the *prima facie* propriety of proposed alienations by limited owners or persons with qualified powers. At the outset I would make it only *permissive* but the resort to it can be made fairly certain (at the instance of the intending transferee) if the law is changd so as to cast on the subsequent plaintiff the onus of displacing the presumption of validity arising from the Court's sanction. This will help considerably to reduce speculative litigation by reversioners, minors, junior members in joint families or tarwads, trustees or matadhipathis, etc.

CIVIL JUSTICE COMMITTEE, 1924.

QUESTIONNAIRE.

(Please make a careful *selection* from these questions.)

1. What do you think is the period reasonably required, ***having regard to the habits and customs of the people of your province,*** for the disposal of the following classes of civil proceedings :—

A. (*i*) *High Courts.*

Original suits : (*a*) commercial, (*b*) others.
First appeals.
Second appeals.
Miscellaneous appeals.

(*ii*) *District and Sub Courts.*

Original suits : (*a*) Title, (*b*) Money.
Regular appeals ; Civil Miscellaneous appeals against orders.
Small causes.

(*iii*) *District Munsiffs' Courts.*

Original suits : (*a*) Title, (*b*) Money, (*c*) Rent, (*d*) Others.
Small causes.

B. (*i*) Claim proceedings in execution in District Courts, Sub-Courts and District Munsiffs' Courts.

C. Suits in the Presidency Small Cause Courts, suits in the City Civil Court, Madras, and execution proceedings in these Courts.

2. Does the period actually taken now for the disposal of those proceedings exceed what you consider to be the reasonable limit in ***many*** cases ? If so, what do you consider to be the main causes of the delay ?

3. ***Apart from any addition to the existing cadre of judicial officers, or the opening of temporary courts,*** what remedies would you suggest for shortening the period during which civil proceedings are now pending ?

4. Do you think it is necessary to alter the present method of recruitment of the different grades of judicial officers, namely, District Munsiffs, Sub-Judges, District Judges and High Court Judges for the purpose of speeding up proceedings ? If so, how would you change the present rules ?

5. Do you think any special training is necessary for District Munsiffs ? If so what sort of training would you suggest ?

6. Is justice impeded by the too frequent transfer of judicial officers from one district to another ?

7. How would you prescribe a standard of efficiency for an officer as regards amount of work done ? What steps would you suggest to insure its attainment ?

8. Is the present delay partly due to the concentration of ***many*** civil courts in one place, and the consequent waiting for members of the legal profession ?

9. Do you think any change in the jurisdiction of the several classes of Courts working at present will lead to more speedy and less costly justice ?

10. Would you enhance the jurisdiction of the District Munsiffs in your province in original suits and small causes ; if so, to what extent ?

11. Would you give special enhanced jurisdiction to selected District Munsiffs, and, if so, to what extent?

12. Do you think it is necessary to relieve the District Judge of miscellaneous work, (*a*) judicial, (*b*) administrative, which he is now doing, to give him more time to attend to important work? What is the kind of miscellaneous work which you would thus transfer from the District Judge and to whom?

13. Would the investing of Sub-Judges and District Munsiffs with jurisdiction to try probate and succession certificate proceedings and *land acquisition* proceedings be acceptable to the public? Would you invest all such officers with such powers, or only selected officers?

14. Would you confer *exclusive* jurisdiction on village courts and panchayats? What is your experience and opinion of the work done by such courts? Up to what extent and in what class of cases should such *exclusive* jurisdiction be given?

15. Would you restrict the scope of section 19 of the Presidency and Schedule (*ii*) of the Provincial Small Cause Courts Act and give Small Cause Courts jurisdiction over some and what classes of suits excluded from their jurisdiction at present? Is there any objection to suits to enforce simple mortgages by the sale of the mortgaged property as also suits relating to partnership with small capital being dealt with by these courts?

16. (*a*) Do you consider that summary procedure as contemplated by section 128 (2) (*f*), C. P. C. could be introduced in the lower courts, and, if so, with what limitations?

(*b*) Would it be desirable (in Bengal and Behar) to include suits for rent on a registered Kabulyat or where there has been a previous decree establishing the relationship and the rate of rent?

17. Would the investing of *Sub-Registrars* with jurisdiction to try certain classes of cases which are not contested make for speedy and less costly justice? If so, what would you suggest as to the limits of that jurisdiction?

18. Do you think that at present the right to appeal is granted in too many cases? If so, in what classes of cases would you curtail it?

19 (*a*). As regards the High Court, do you think the curtailment of the right of appeal under letters patent from the judgment of a single Judge is necessary, and, if so, in what cases if any would you curtail it?

(*b*) What do you think of the suggestion that in revisions and appeals from the moffusil of the value of Rs. 1,000 and under, no L. P. A., should be allowed?

20. Are very many frivolous second appeals filed in the High Court of your province? If so, how would you prevent it? What do you think of the suggestion that in suits for property worth (*a*) Rs. 1,000 and less or (*b*) Rs. 500 and less or (*c*) Rs. 250 and less, no second appeal should be allowed, whatever the class of the suit?

21. Would you agree to the suggestion that the appellant should be compelled to deposit in full the decretal amount before the second appeal is allowed to be filed?

22. Is the power given under Order 41, Rule II, duly and systematically exercised? If not, what would you suggest to ensure this?

23. Is the right of application in revision to the High Court much abused, and, if so, how would you curtail it? Would you accept the suggestion (1) that in cases of revision under the Provincial Small Cause Courts Act, the decretal amount should be deposited in Court before a revision petition can be presented, and (2) that no revision petition under section 115 should lie against such interlocutory orders as can be attacked in an appeal against the decree in the suit.

24. In what ways would you change the present procedure as regards the trial of *original* and *small cause* suits, with a view to make justice more speedy and economical?

25. At present much time is taken *after* a suit is filed, in serving the defendants who are either absent or wilfully avoid service, when the process-server goes to serve the defendant's summons. What would you suggest as a remedy for this? Would the application of the procedure under S. 106 of the Transfer of property Act to civil suits be desirable?

26. Does the usual form of plaints in your province differ materially from the English writ and statement of claim? If so, would you insist on the latter form being used in all cases? Are the forms of plaints given in Civil Procedure Code adhered to generally. If not, what penalty would you suggest for non-adherence thereto?

27. Are the provisions of the Civil Procedure Code in Orders VII and VIII as regards pleadings neglected much in your province?

28. Would the more extensive use of the post office for the service of notices and summonses be effective? Can the village officials of the village where the party to be served is living, be used for purposes of serving process and, if so, with what precautions would you use them?

29. Would a rule be advisable requiring parties to give a registered address service at which should be deemed to be good service for all purposes of the suit and execution?

30. What do you think of the suggestion that process-server should always report himself to the pleader of the party on whose behalf he is taking out a process for service, so that the pleader or the party may assist him in finding out the person to be served and prevent waste of time.

31. What provisions would you suggest to ensure the better framing of issues?

32. Are the provisions of Orders X, XI and XII C. P. C. as regards the examination of the parties, discovery and admission of documents, neglected in your province? If so, what is the reason for such neglect? What would you suggest as the remedy?

33. Would the examination of both the plaintiff and the defendant, not merely with a view to ascertaining what the points in controversy are at the first hearing, but as part of the trial at the beginning of it, before any witnesses are examined, tend to minimise the calling in of irrelevant evidence and of witnesses unnecessarily? Would you agree to the suggestion that it is only after the examination of the parties in that form, that any steps for the summoning of witnesses should be taken?

34. Is the provision in Order 16, Rule 16, clause (1) strictly enforced in your province? If not, what steps would you suggest to put down the system of issuing summonses to witnesses again and again for the several hearings with the consequent delay due to non-service?

35. Is much unnecessary and avoidable oral evidence let in in the courts of your province? What would you suggest to prevent the calling of several witnesses who ultimately prove nothing? Can you suggest any means by which the court can control the citing of a large number of witnesses and examination of them?

36. What is your opinion on the suggestion that in all cases where there is no appeal (except small causes) such as enquiries into claims, succession certificate proceedings, proceedings for removing an obstruction to delivery of property, as also in *ex parte* proceedings, *affidavits*, should be the primary mode of proof, and no oral evidence should be allowed, except with the special leave of the court on pre-payment of special costs?

37. What do you think of the suggestion that courts should have discretion to fix a time-limit for the examination and cross-examination of witnesses?

38. Would you extend the application of Order 37, C. P. C. and, if so, to what classes of cases?

39. Could the principle of representative suits be made of wider application and are any steps necessary to ensure that this form of suit is insisted on in proper cases? How would you deal with the case of (*a*) Mitakshara families, (*b*) other co-owners, (*c*) Malabar tarward?

40. Is it possible and desirable to throw the duty on a legal representative to come forward and request the court to add him as a party, on pain of his being bound by the decree, in case he was aware of the proceedings? If so, what would you suggest, as the most practical way of doing this?

41. Is much delay caused in the courts of your province by the difficulty of appointing a proper guardian *ad litem* for minor parties? If so, what would you suggest to remedy the defect? What do you think of the suggestion that instead of successive petitions being filed, as each proposed guardian refuses to act, the plaintiff should be made to name all the possible guardians in one petition and notice should be ordered to go to them simultaneously and the Court should appoint at the hearing of the petition the one best fitted to safeguard the interest of the minor?

42. How far is the practice of granting *ex parte* injunctions and orders taken undue advantage of in your province? How would you check it?

43. Are judgments of the courts in your province unduly long in any appreciable number of cases and does such length interfere with the speedy despatch of business? If so, what would you suggest to shorten them?

44. Are points of law going to the root of the claim or defence usually disposed of before taking evidence in your province?

45. Are dates for original and adjourned hearing fixed by judges them selves in your province? If not, has it led to delay in disposal? If so, how would you check this irregularity?

46. Are pleaders usually consulted by the Courts in fixing the time required for examination of witnesses and arguments? If not, has it led to any delay in disposal? What sort of rule would you frame to ensure such consultation?

47. Are trials in your province unduly delayed by the examination of witnesses on commission? How would you control the length of such examination? Would you add to the powers of commissioners? Would you insist on written interrogatories except by special leave of the judge?

48. Will the insistence on written applications supported by affidavits (*as a rule*) for adjournments, be of effect in speeding up work? Is the amount

of *day* costs which can be allowed under the Rules on applications for adjournments in your province sufficient to prevent frivolous applications for adjournments ?

49. Are suits not tried continuously day by day in the moffusil courts in your province in a *large number* of cases ? If so ,what do you think is the reason for such omission ? How would you enforce such a rule ?

50. Does the High Court exercise sufficient supervision over District Judges to ensure proper inspection by the District Judge of the lower courts ?

51. Would a system of giving special expedition to *commercial suits* be of value in the subordinate courts of your province ? If so, what method would you suggest ?

52. What amendments would you suggest in the procedure for obtaining execution of the different classes of decrees ?

What is your opinion on the following :—

53. Extension of the principle of section 21, Civil Procedure Code, to proceedings in execution.

54. Investing of courts to which a decree is transferred for execution, with the powers which a court which passed the decree has, as to adding of legal representatives, recognition of assignments of the decree, transfer for execution and similar matters.

55. So modify the language of section 47 as to include proceedings taken by a *stranger* purchaser at a court sale to obtain delivery of the property which he has purchased.

56. (*a*) Curtailing the period given in section 48, C. P. C. for the execution of money decrees to six years, (*b*) altering Art. 182 of the Limitation Act by substituting one year for three years therein, (*c*) altering of the starting point from the date of the last application to the date of the last order on the last application. What do you think of the suggestion that it shall not be necessary for a decree-holder to apply every three years or one year, and that he should be allowed to execute the decree at any time he finds it convenient to do so, provided he does not exceed the 6 or 12 years' limit.

57. Altering section 66 of the Civil Procedure Code so as to prevent *any* party to the suit in execution of which sale took place from saying that the apparent purchaser is not the real purchaser and *any one* except the *bona fide* creditor of the real purchaser from setting up such a plea *whether he is plaintiff or defendant,* or is one who claims under either.

58. Altering Order 21, Rules 1 and 2, in such a manner as to restrict pleas of payment out of court, to payments through *post office* or a *registered bank or the vakil of the party to whom the payment is made* or *in the presence of the Sub-Registrar.*

59. Allowing the transferee of a decree on filing an affidivit by the transferor to the fact of the transfer to have execution as though he were the original decree-holder pending issue of a notice to the transferor. Is there any objection to the second proviso to Rule 16 of Order 21 being deleted or modified ?

60. Is there any objection to the deletion of Order 21, Rule 21 altogether ?

61. (a) Is a special notice under Order 21, Rule 22, necessary ? Can it not be made part of the notice of the execution petition in which the substantial relief is asked for ?

(*b*) Is there any objection to the deletion of Order 21, Rule 22 altogether?

62. In Order 21, Rule 26, will a provision that there shall be no interim stay in the case of money decrees work hardship ? Would you agree that in

the case of money decrees, the proviso of Order 21, Rule 26 should be modified so as to give a greater discretion to the court ?

63. Is there any necessity for special notices in the different stages of execution proceedings in the case of money decrees sought to be executed by the sale of immoveable properties ? Will it not be enough, as in the case of suits, if the judgment debtors are given one notice at the beginning of the execution proceedings, and it is ordered that they should be called to be present in court at all subsequent stages in respect of that execution petition, (*e. g.*, for settling of the proclamation, fixing of the sale, grant of permission to the decree-holder to bid) ?

64. Would you be in favour of a rule that in all cases the judgment-debtor should be served with a copy of the proclamation of sale ? Is there any reason why writs of attachment and sale proclamation should not issue simultaneously in all suits ? Can it be made a rule that notice of execution petition may be served on the vakil who appeared for the judgment-debtor in the suit and that that will be sufficient service ? Can it be made a rule that refusal by the vakil to receive such notice is tantamount to refusal by the party ?

65. Would you approve in your province of the system of the execution of arrest warrants by village officials, such as the village headman, or the village accountant ?

66. What suggestions would you make for so altering the present procedure as regards mortgage suits as to make the sale in execution of a mortgage decree clothe the purchaser with a right to the property free from future litigation as much as possible ? What is your opinion on the following suggestions —

(*a*) that with the plaint, the plaintiff should file an encumbrance certificate in respect of the property mortgaged for the period for which such certificate is available in the Registration offices.

(*b*) that the persons whose names appear in such encumbrance certificates or their legal representatives should as a rule, be made parties to such a suit and that the failure to do so should make the suit liable to dismissal for non-joinder of parties ?

(*c*) that all parties to the suit should be allowed to plead their rights to the mortgaged property, and that such rights should be finally determined in that suit, at all events, *if the plaintiff so desires.*

(*d*) that all sales in execution of mortgage decrees shall be free of all encumbrances, and that the rights of puisne and prior encumbrancers should attach only to the money in court.

(*e*) Is too much time frequently granted by the preliminary decree in mortgage suits for payment ? Is any time necessary ?

In simple mortgage suits is there any necessity for a final decree ? Is it necessary to have a separate personal decree where the security has been exhausted ?

67. Is much avoidable delay caused in the disposal of execution proceedings by frequent orders staying such proceedings made by the appellate courts in your province ? What would you suggest to prevent such orders being asked for and made ? Would you invest the appellate courts with jurisdiction to award exemplary compensation in cases in which they are satisfied that they have been asked for on insufficient grounds ; if so, what is the nature of the compensation which you would award ?

68. Would you curtail the power of co-ordinate or inferior courts to grant injunctions to stay execution of other courts' money decrees by imposing re-

strictions and terms—such as that the money decreed should be deposited or security to the satisfaction of the court which is executing the decree should be given?

69. Does the present law as to insolvency stand in the way of a decree-holder getting the fruits of the decree speedily? If so, in what way does it hamper? Is there any avoidable delay in the disposal of insolvency petitions and realization of assets by receivers in your province? Would the devolution of the exclusive jurisdiction which a District Judge has in some cases under the present act make for speed in such matters? What kind of devolution and on whom, would you suggest?

70. Are execution proceedings in your province frequently delayed by absconding judgment-debtors? What rule would you suggest to prevent it? Does the provision for arrest or attachment before judgment in the present code operate effectively to prevent such delay?

71. What provisions of the Law of Evidence now operate to protract trials unduly? What is your opinion on the following suggestions :—

72. As regards mortgage suits, is it necessary to retain the provision that the plaintiff suing on it, must call an attesting witness, if available? Cannot the provision be so changed as to make every document of mortgage, presumably *valid,* and make the person who disputes its validity prove his case?

73. As regards secondary evidence, is it not desirable to allow the parties to consent to secondary evidence being given in any form, even as regards public documents, for example, papers printed by the High Court in a previous litigation? How much time is taken by insisting on what are called "*certified* copies?"

74. In what cases do you consider that the Law of Limitation might be made more stringent?

75. What changes in the substantive law of the country would you suggest for the purpose of speedy trial of suits, or speedy settlement of claims and speedy realization of the fruits of his decree by a *bona fide* decree-holder?

76. Would you agree that all future partitions of immoveable property should be evidenced by a registered document?

77. What is your opinion upon a similar provision in the case of partnerships started with a capital of one hundred rupees and more, and as to the compulsory registration of all contractual partnerships?

78. Do you agree that the doctrine of "part performance" practically negatives the provisions of the Transfer of Property Act as to creation of titles in immoveable property and should not be allowed scope in this country, but that every transaction relating to immoveable property in which rights of the value of one hundred rupees and more are created and to which at present section 17 of the Registration Act would apply *if there is a document,* should be entered into *only* by a registered instrument?

79. That the discharge of obligations created by registered document should be valid only if there is a registered document to evidence it? (The cost of the registration may be made uniform—say one rupee—as in the case of the value of stamps for a receipt, whatever the value of the obligation.)

80. That no court should entertain a plea that any party executed a document, unless it is registered, *in the case of persons who cannot sign their names?* What limitations would you suggest to such a rule in case you accept the general proposition?

81. What is your opinion on the system of allowing a person who is a party to a document or a transaction to say that a document executed by him is a sham and was never intended to be acted upon; that the apparent owner of property in whose name the title deeds stand, is not the real owner? Will the enactment of a rule that *no party* to a transaction shall be allowed to plead that it is benami, assist in the realization of the fruits of a decree speedily and prevent unnecessary claimants?

82. Do you think frivolous suits can be put down by enhancing the rate of court fees in suitable cases, and if so, what suggestions would you make or this matter?

83. Is it necessary to retain the provision in the case of mortgage documents that they should be attested, and is there any justification for making a difference between them and sale deeds and leases of equal value?

84. What suggestions would you make to prevent champerty and maintenance in India?

85. Would you give the court powers to refer to referees any class of cases, and if so what?

86. Has the multiplication of law reports interfered with speedy justice? What would you suggest to minimise their number?

87. Do you think that codification of law to a larger extent than heretofore would help to make justice speedy and economical? If so what branches of law would you suggest for immediate codification?

SUMMARY OF ENGLISH CASES.

NEW YORK LIFE INSURANCE COMPANY *v.* PUBLIC TRUSTEE, (1924) 1 Ch. 15.

Chose in action—Locality of—Simple contract debts—Company—Residence.

Strictly speaking choses in action have no locality but for some purposes of the law it is necessary to assign to them a locality. Thus judgment-debts are assets when the judgment is recorded; leases where the land lies, specialty debts where the instrument happens to be. A simple contract debt is situated in the country where the debtor is for the time being residing, even though the debt be expressly payable in another country. Where the debtor is a company, it resides in the place where its administrative business is carried on.

REYNOLDS *v.* SHIPPING FEDERATION, LIMITED, (1924) 1 Ch. 28.

Conspiracy—Agreement among employers to employ only members of particular union—Action if maintainable by person who is refused employment.

The shipowners in a certain country entered into an agreement with a certain trade union that they would employ no one who was not a member of the union. An employee, who had been offered a job and was fit for the same, was ultimately rejected as he was not a member of the union. In an action for conspiracy, *held* as the agreement or combination was not against a particular individual but merely operated to exclude such individuals as might not from time to time satisfy a qualification which was within the reach of any one who desired employment, and the motive was not a malicious desire to inflict a loss on any individual or class of individuals but a desire to advance the business interests of employed alike by means of collective bargaining and control, an action would not lie. *Moghul Steamship Co.* v. *Mc Gregor, Gow and Co.*, (1892) A. C. 25 followed.

PERFORMING RIGHT SOCIETY, LTD. *v.* CIRYL THEATRICAL SYNDICATE, LTD., (1924) 1 K. B. 1.

Copyright—Infringement of musical work—Company licensee of theatre—Managing Director—Liability of—Authorizing performance—What amounts to.

A company took the lease of a theatre. Its managing director who had been licensed to stage plays entered into an agreement with the Company under which an orchestra was to be engaged by the latter to provide music during the performance. In his absence abroad and without his knowledge the band infringed the musical copyright of the plaintiffs in certain works for which an action was brought against the managing director, in his personal capacity, as apart from the Company.

Held, he had not infringed the copyright of the plaintiffs and would not be liable.

Per Bankes, L. J. :—The musicians being the servants of the Company cannot be said to have been authorized by the director to perform the musical works nor could be said to have permitted the use of the theatre for such performance.

Per Scrutton, L. J. :—The question is one of the liability for infringement by a person not actually taking part in the performance but only more or less interested in it. The obvious remedy would be to sue the performers who infringe the copyright. In law, a man cannot be said to permit a performance if he cannot control it ; nor can he be said to permit

the use of a place for performance, if he does not know the work is being performed.

Per Atkin, L. J. :— *Prima facie* a managing director is not liable for tortious acts done by servants of the Company unless he himself is privy to the acts by ordering or procuring them to be done.

STOCKHAM *v.* EASTON, (1924) 1 K. B. 52.

Landlord and tenant—Dwelling house—Alterations in house—First floor not materially altered but improved—Lessee if can claim apportionment.

A dwelling house which had been originally let as a whole was afterwards altered structurally and substantially at an enormous expense by the landlord in order to facilitate its being let out separately to various tenants and the identity of the house was destroyed. One particular floor was not altered structurally but improvements were made adding to the comfort and convenience of the lodgers. The tenant applied for the apportionment of the rent on the basis of what the house fetched when it was let out as a whole in order to determine the standard rent. *Held,* as the dwelling house taken as a whole had been so materially altered as to lose its identity, the tenant of the first floor was not entitled to the relief claimed. The policy of the Increase of Rent and Mortgage Interest (Restrictions) Act of 1920 was to encourage landlords and not to hamper them in adding to the number of dwelling houses.

BADMAN BROTHERS *v.* THE KING, (1924) 1 K. B. 64.

Petition of Right —Amendment —Powers of Court — Limits.

A Court in England has got power to allow an amendment in a Petition of Right provided it does not substantially alter the cause of action.

Per Bankes, L. J. :—The amendment of the petition in such a way as substantially to deprive the Crown of the right to refuse the fiat, such as an amendment which introduced an entirely fresh cause of action in respect of which the Crown had never an opportunity of considering whether it would grant a fiat or not, would be inconsistent with the Petitions of Right Act, 1860, and therefore not permissible.

Per Atkin, L. J. :—The test in every case would be :— Is the Court satisfied by the representatives of the Crown that there is no reasonable probability that if the petition as amended had been presented in the first instance the fiat would not have been granted ? There is no authority to support the view that the power of amendment is limited to amendments of the Crown's answer.

TENERIA MODERNA FRANCO EEPANDLA *v.* NEW ZEALAND INSURANCE COMPANY, (1924) 1 K. B. 79.

Insurance—Marine—Affidavit of ship's papers—Order for discovery—Form of.

In an action based on a marine insurance policy, the underwriters are entitled to a much wider discovery than are other litigants in an ordinary commercial case. They can require the production not only of documents in the possession of persons interested in the insurance, but all material documents irrespective of whether they are in the possession of interested persons or not. If the plaintiff satisfies the Court that he has made all reasonable endeavours to get the papers from a person over whom he has no control but has been unable to get them, the Court will usually dispense with their production.

WILDRIDGE *v.* ASHTON, (1924) 1 K. B. 92.

Adulteration—Milk—Samples how to be taken.

An Inspector of Nuisances took samples from three big vessels containing milk sent by the same consignor to the same consignee and after analysing the same preferred one information based on the average result of the analysis of the three samples. Expert evidence was let in that the result would have been the same if all the milk had been mixed together and a sample analysed.

Held, the method adopted in taking the samples was not only the most convenient one, but quite legal and proceedings could be taken on the basis of the information.

GRIFFITHS *v.* STUDEBAKERS, LTD., (1924) 1 K. B. 102.

Motor car —Licence —Contravention of terms of — Master how far liable for acts of servant.

Under certain Regulations framed for regulating traffic along the roads, a limited trade licence was issued to the respondents according to which a motor car used by them was not to contain more than two persons in addition to the driver. Without the knowledge of the respondents and contrary to their express directions, one of their servants drove a car containing more than the fixed number of persons. *Held,* failure to observe the conditions imposed by the licence rendered the owners liable to the penalty thereunder. Neither the fact that they had taken precautions to prevent a breach of the Regulations nor the fact that the act was done by their servant contrary to orders affected their liability.

PERLAK PETROLEUM MAATSCHAPPIJ *v.* DEEN, (1924) 1 K. B. 111.

Interrogatories—Question of foreign law—When allowed—Practice.

Questions of foreign law are treated in English Courts as questions of fact, but the only evidence which is admissible to prove it is that of experts skilled in such law. It is not enough to show the man in fact knows the law or the point ; he must be one who from his training may be expected to know the law. When an interrogatory is sought to be served on the defendant on a question of Dutch Law, the plaintiff must first establish that the person interrogated is a competent witness.

QUEEN'S CLUB GARDENS ESTATES, LIMITED *v.* BIGNELL. (1924) 1 K. B. 117.

Landlord and tenant—Weekly tenancy—Notice to quit—Duration of notice—When to expire—Possession if can be required " on or before " a certain date.

A weekly tenancy commenced on a Saturday and a notice to quit was served on a Friday " for the termination of the tenancy one week from Monday next, on or before which vacant possession is required. " *Held,* the notice to quit was invalid.

Per Lush, J. :—*Quaere* : Whether a notice to quit can be said to be valid if the landlord mentions a specific date for the termination of the tenancy and adds that " on or before " that date possession will be required ?

In the case of a weekly tenancy, a week's notice to quit is what is valid in law. In all periodic tenancies, whether they be yearly, quarterly, monthly or weekly, the notice to quit must expire at the ned of the current period and not in the middle of it. Case-law discussed.

RUSSEL *v.* RUSSEL, (1924) P. 1.

Evidence —Divorce —Adultry of wife —Husband's denial of intercourse—If admissible—Legitimacy proceedings—Difference.

The husband in a petition for divorce alleged as the ground the adultery of his wife, resulting in the birth of a child. He gave evidence that at the time when conception was normally possible, he occupied the same bed with her, but neither then nor at any time when the child would possibly have been conceived had he sexual connection with her. *Held.* the question at issue being one of adultery, his evidence was relevant to the issue and perfectly admissible. On a question of legitimacy, the matter might stand on a different footing. The objection to admissibility on the ground of morality, decency and public policy considered and commented on.

JACKSON *v.* JACKSON, (1924) P. 19.

Husband and wife—Desertion—What amounts to—Refusing sexual intercourse —Effect.

Where a husband and wife live under the same roof, the mere fact that the former refuses or abstains from sexual intercourse with the other does not amount in law to desertion. An exhaustive definition of what amounts to desertion is impossible ; abandonment amounts to it ; so also if one causes the other to live separate and apart.

Case-law on the subject discussed.

JOTTINGS AND CUTTINGS.

The Liability of Motor-car Owners :—The question whether the owner of a motor-car who allows a friend to drive him is liable for injuries sustained by a third person through the negligence of the friend was answered by Mr. Justice Acton in *Pratt* v. *Patrick* (December, 21) in the affirmative, and the

decision, though novel in this particular form is amply covered by authority. Nearly a century ago, in a case where A., having borrowed a horse and chaise, went for a drive accompanied by B., to whom he handed the reins, and through negligent driving, the chaise collided with an omnibus, the Court of Exchequer held [*Wheatley* v. *Patrick*, (1831) 6 L. J. (N. S.) 193] that A. was responsible as for his own negligence. The point was taken that B. was not A.'s servant, but it was enough, said Lord Abinger, that A. was in possession of the chaise, that he hat actual control, and that he permitted B. to drive. This decision was followed by the Judicial Committee in *Samson* v. *Aitchison* [(1912) A. C. 844], where it was held that if the owner of a vehicle who is in occupation of it allows another person to drive, he is liable as principal for the damage caused by negligent driving, in the absence of evidence that he has abandoned his right of control by contract or otherwise. So long as the owner is in fact in a position to exercise control, he is as much responsible for the negligent driving of a volunteer as for that of a person as between whom and himself the relation of master and servant exists. Another point of some interest in the case under consideration is that there was a successful defendant, the owner of the motor lorry with which the defendant Patrick's car collided, and that the Judge ordered the latter to repay to the plaintiff the costs for which she was liable to the owner of the lorry. Shch an order is now a common one where, in the case of a collision between two vehicles, an injured person, uncertain where the blame lies, reasonably joins the owners of both as defendants. *The Law Journal.*

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The Office of Lord Chancellor:—Amid the rumours about the occupants of the great legal offices in the Labour Government, not a few persons, more interested in constitutional than in personal matters, are wondering whether the new Government will attempt to effect any fundamental changes in the office of Lord Chancellor. It is, at any rate, not uninteresting to recall that the Committee on the Machinery of Government, over which Lord Haldane presided in 1918, recommended that the judicial duties of the Lord Chancellor should be confined to the hearing of cases in the House of Lords and the Judicial Committee involving questions of constitutional usage, and that he should cease to act as Speaker of the House of Lords. They were induced to recommend

these large changes in one of the most historic offices in the State because they realised that its duties had become so arduous and varied that no single individual could effectually discharge tehm. That, of course, is a view which many occupants of the Woolsack themselves have expressed. It was strongly expressed by the late Lord Herschell in an address he delivered thirty years ago

" How such a mass of heterogeneous duties, judicial, ministerial, and legislative, came to be imposed upon one official is a matter of history. The thing has grown gradually, and in the casual, haphazard, adventitious way so characteristic of our institutions. Few will deny that for the work now and in the future to be done ,the machinery, if it can be so called, is feeble, discredited, and obsolete, and that the time has come for its reconstruction upon a far more liberal and enlightened basis.

An office which makes its occupant the head of the Judiciary, the Speaker of the House of Lords, and a Cabinet Minister is certainly not undeserving of Walter Bagehot's description of it. But while it is easy to say that an office is ' a heap of anomalies, ' it may be very difficult to find the right way to reform it. *Ibid.*

* * *

The Chancellor as Speaker :—If the Lord Chancellor is to remain the administrative head of our legal system, and retain his large amount of legal patronage, it is obviously desirable that his intimate acquaintance with the Bar, at present maintained by his active part in judicial work, should not be interfered with. If, on the other hand, his position as a Cabinet Minister were destroyed, the Cabinet, as Lord Haldane's Committee pointed out, would lose ' the oldest in standing of the Ministers of the Crown, ' and be deprived of ' a legal and constitutional adviser of the highest standing. ' The creation of a Minister of Justice would, of course, relieve the Lord Chancellor of a large part of purely administrative work, and eventually, no doubt, the continued grouth of our legal system will make inevitable the establishment of a single Ministry in which—to quote Lord Langdale— ' the affairs of justice should be the particular object of attention. ' On the whole, however, if, apart from the creation of a Ministry of Justice, any reconstruction of the Lord Chancellor's office is required, the easiest way would be to relieve him of his heavy duties as Speaker of the Upper Chamber. About this proposal, however, there is a practical difficulty

which was not dealt with by Lord Haldane's Committee. The Lord Chancellor, as Speaker of the House of Lords, receives a salary distinct from that which he receives as Lord Chancellor, and it is paid from a different vote. Would the loss of salary be made good—and if the present emoluments of the office were reduced by half, would not its status be prejudicially affected ? *Ibid.*

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The Law Society's Meeting :—Much more lively than usual were the proceedings at the January meeting of the Law Society. In addition to the animated discussion on Mr. Dodd's proposal that solicitors should be given a right of audience in the Supreme Court and at Quarter Sessions, on which we have something to say below, the meeting, on the motion of Mr. Edward A. Bell, expressed its satisfaction with the action of the Council in seeking to obtain legislation to enable solicitors 'to render gross sum charges in lieu of dismissed bills of costs.' The President made it clear that both Lord Birkenhead and Lord Cave had sympathised with the proposal to relieve solicitors from the obligation to set out all the petty details which now go to the making of a bill of costs, and one cannot imagine that a proposal which would probably have been carried out if either of the ex-Lord Chancellors had found the necessary time to submit it to Parliament, will not receive the support of the new Lord Chancellor. Another interesting statement made by the President was that the Council had forwarded to the Lord Chancellor a report in favour of the creation of a Central County Court in London. Here, however, to judge from the critical inquiries addressed to the Council by Sir Claud Schuster, the chances of success appear to be not so great. The President made it clear that the Council are fully alive to the great importance of the forthcoming visit of the American Bar Association. It has already been already announced, so far as the social side of the gathering is concerned, that some function will be held in Westminster Hall, that dinners will be held in each of the Inns of Court, and that the City of London Solicitors' Company will act as hosts in one of the old Halls of the City. It may be hoped that the fine Hall in Chancery Lane will also be the scene of some function which wil lspecially associate the Law Society with the memorable visit of our American brethren. *Ibid.*

Solicitors as Advocates :—Nobody can accuse the Council of the Law Society of lack of either zeal or discretion in law reform. Some of the members of the Society allow their zeal to outrun their discretion. Little more than eighteen months ago, at the annual general meeting of the Society in 1922, Mr. James moved 'That in cases where counsel, having accepted a brief, fails to appear at the hearing, it is expedient that the solicitor instructing him be alolwed in his absence to conduct the case himself.' Nothing having come of this attempt to give solicitors an emergency right of audience in the High Court, Mr. Dodd has proceeded a step further by moving, at the special meeting of the Society held last week, 'That it is to the public interest that solicitors should have audience in all Courts co-equal with barristers.' This motion was defeated by fifty-eight votes to thirty-two, whereupon Mr. Dodd insisted upon a poll of the whole members of the Society, some 10,000 in number, being taken, producing the twenty signatures necessary for the purpose. A more obvious waste of the resources of the Society—for the cost of a poll by post is considerable—can hardly be imagined. It is perfectly clear that the adoption of Mr. Dodd's proposal would involve the introduction of fusion.' To believe that solicitors are to be free to discharge the functions of barristers without barristers being at liberty to undertake the duties of solicitors is to shut one's eyes wilfully to the public sense of fair-play. Now, a poll on the question of fusion was taken as recently as 1920, and the proposal was rejected by the members of the Society by 3,531 votes to 1,820. There is no likelihood that the members of the Society have changed their minds on such a matter in little more than three years, and there is no justification, therefore, for the Society again being put to the expense of another poll. If the procedure of the Society continues to be abused in this fashion, the Society may do well to consider whether the number of signatories to a demand for a poll ought not to be substantially increased. The case for fusion is an arguable one, though, for our part, we believe that the amalgamation of the two branches of the profession would be bad for the public and for the profession itself. But whenever the proposal is discussed, it ought to be presented openly, and not in the shape of a mere attempt to obtain for solicitors a right of audience in the High Court as well in the Country Court. *The Law Journal.*

CONTEMPORARY LEGAL LITERATURE.

Damages for Fright— is the heading of an article in the *American Law Review* for Nov.-Dec. 1923 in which the writer proceeds to show that the damages claimed and awarded are not for fright but for the physical injuries consequent on the fright into which the, plaintiff is thrown by the defendant's negligent act. But those cases which deny recovery in such cases would seem to labour under the impression that the damages are claimed for the impalpable mental state called fright.

The first English decision on the subject is in *Victorian Ry. Commissioners* v. *Coultas* (1888) 13 A. C. 222. The Judicial Committee dismissed the plaintiff's claim for damages for nervous shock caused by the defendant's negligence, in the absence of proof of actual impact, even though serious physical injuries resulted from the shock. They said that no precedent was cited, and declined to establish a precedent in favour of allowing such recovery. The same month the Supreme Court of New York delivered a similar decision, saying also : " We have been unable to find either principle or authority for the maintenance of this action and we have been referred to none by the counsel."

The doctrine of the *Coultas case* was repudiated in Ireland within two years of the decision. In *Bell* v. *Great Northern Railway of Ireland* (1890) 26 L. R. Ir. 428 an earlier unreported Irish case was followed, and the Court refused to follow the Privy Council case. Lord Esher, M. R., doubted the *Coultas case* in *Pugh* v. *London, etc., Ry. Co.* (1896) 2 Q. B. 248 ; and that it was so questioned is observed in *Wilkinson* v. *Downton* (1897) 2 Q. B. 57. In the latter case damages were awarded for injury resulting from nervous shock and hurt to plaintiff caused by the intentional act of the defendant. The decision was based also on the ground of the defendant's act having been wilful. The identical principle involved in the *Coultas case* came before the Kings Bench in *Dulieu* v. *White and sons* (1901) 2 K. B. 669, where the plaintiff, a pregnant woman, was frightened by the negligence of the defendant's servant in driving a carriage, with the result that she sustained a severe nervous shock, which in turn caused a mis-carriage. (There had been no physical impact on her). The *Coultas case* was expressly repudiated and the plaintiff was allowed to recover. This case has been treated as settling the law in England by later decisions, including one in the House of Lords

Coyle v. *Watson* (1915) A. C. 1 (see also *The Rigel* (1912) P. 99; and the Scotch case *Gilligan* v. *Robb* (1910) S. C. 856).

The law in America varies with the different jurisdictions. Some states follow the New York decision and the *Coultas case* while others prefer to follow the opposite rule. The principal reasons assigned for denying recovery in such cases fall into three classes. (1) Fright caused by negligence is not itself a cause of action, and therefore none of its consequences can give a cause of action; (2) the damages resulting from fright are too remote; (3) it is contrary to public policy to allow recovery for damages for personal injuries resulting from fright.

The first two reasons are based on a misapprehension. The injury is no doubt a result of fright, but is as much a result of the defendant's negligence. Fright is only a link in the chain of causation; it being impalpable does not make the physical injury a less proximate result of the defendant's negligence than when the fright is accompanied by physical impact. Fright is in itself no ground of actions, because the law takes no account of emotions. *De minimis non curat lex.* But shattered nerves is as truly a physical injury as broken bones. Nervous shock is not mental anguish. The two are distinct. Without fright, no doubt, the injury would not have been caused; but then fright in such cases is only an instrument operated by the tort-feasor's negligence. It is not an intervening, efficient cause of the injury, nor an independent concurring cause. No damage is too remote which can be directly traced to the act of the defendant as having been its sole cause: no matter how many links intervene, whether fright or nervous shock, or physical impact.

The reason of public policy given is that to allow recovery in such cases would tend to encourage speculative litigation. But this reason implies a distrust in the capacity of tribunals to distinguish true cases from false; and to that extent is not peculiar to the subject on hand. And then it is certainly public policy that every wrong should have a remedy.

BOOK REVIEWS.

M. C. SARKAR'S PROVINCIAL INSOLVENCY ACT, 3rd Ed., 1924. *Published by M. C. Sarkar and Sons, Calcutta.*

It is just four years since the Provincial Insolvency Act, 1920 came into force and already there has grown a large mass of case-law under it and the present edition of Mr. Sarkar's book which has given a collection of all the decisions under the Act in their appropriate places is bound to be of great assistance to the profession.

THE AGRA PRE-EMPTION ACT by *Brinda Ban Katiar* Vakil, High Court, Allahabad : The Allahabad Law Journal Press. Rs. 4-8-0.

The author has placed within the reach of all lawyers having to deal with the Law of of Pre-emption in the Province of Agra a critical and analytical exposition of the provisions of the Agra Pre-emption Act which has been enacted to remove the uncertainty in the law of pre-emption as administered by the judiciary as a head of the customary law of the province. In this book the author has given a summary of all the leading decisions which formed the backbone of enactment and has noted down the changes effected by the Act, in their appropriate places. The cases have been brought down to May, 1923. We have no doubt that this book will be found of great use by those having to deal with the law of pre-emption in the province of Agra.